

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEALS No. 2550 TO 2584 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL  
and  
Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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SPL.LAQ OFFICER

Versus

CHAMANBHAI KUVARJIBHAI  
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Appearance:

MS NANDINI JOSHI, AGP for the appellants  
MR NITIN M.AMIN for the respondents-claimants  
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CORAM : MR.JUSTICE J.M.PANCHAL  
and  
MR.JUSTICE M.C.PATEL

Date of decision: 16/10/2000

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

Admitted. Mr. Nitin M. Amin, learned counsel waives service of notice on behalf of the claimants in each appeal.

Having regard to the facts of the case and in view of the joint request made by the learned counsel for the parties, all the appeals are taken-up for final hearing today.

1. These appeals, which are filed under section 54 of the Land Acquisition Act, 1894 read with section 96 of the Code of Civil Procedure, 1908, are directed against common judgment and award dated December 28, 1999 rendered by the learned 2nd Extra Assistant Judge and Special Judge (LAR), Ahmedabad (Rural) at Mirzapur, in Land Acquisition Cases No. 2272/96 to 2306/96. We may state that the Land Acquisition Officer had made common award dated August 28, 1995 determining the amount of compensation payable to the claimants. All the above-numbered Land Acquisition Cases were consolidated and Land Acquisition Case No.2295/96 was treated as main case, in which the parties had led common evidence. As common questions of facts and law arise for our consideration in these appeals, we propose to dispose them of by this common judgment.

2. The Executive Engineer, Narmada Project, Limbdi had proposed to the State Government to acquire agricultural lands of village Vahiya, Taluka : Dhandhuka, District : Ahmedabad for the public purpose of construction of Narmada Project, Limbdi Branch Canal. On scrutiny of the said proposal, the State Government was satisfied that agricultural lands of village Vahiya were likely to be needed for the said public purpose. Therefore, notification under section 4(1) of the Land Acquisition Act, 1894 ("the Act" for short) was issued, which was published in the Government Gazette on November 13, 1992. Thereafter those persons whose lands were sought to be acquired were served with notices and they had filed their objections against proposed acquisition. After considering their objections, Special Land Acquisition Officer, Narmada Project, Unit-3, Ahmedabad had forwarded his report to the State Government as contemplated by section 5-A(2) of the Act. On consideration of the said report, the State Government was satisfied that agricultural lands of village Vahiya, which were specified in the notification published under section 4(1) of the Act, were needed for the public purpose of construction of Narmada Project, Limbdi Branch Canal. Therefore, declaration under section 6 of the Act

was made, which was published in the Government Gazette on September 14, 1993. Thereafter interested persons were served with notices for determination of compensation. The claimants appeared before the Land Acquisition Officer and claimed compensation at the rate of Rs. 62/- per sq.mt. However, having regard to the materials placed before him, the Land Acquisition Officer by his award dated August 28, 1995 offered compensation to the claimants at the rate of RS. 1.05 ps. per sq.mt. for irrigated lands and Rs. 0.70 ps. per sq.mt. for non-irrigated lands. The claimants were of the view that the offer of compensation made by the Special Land Acquisition Officer was inadequate. Therefore, they submitted applications under section 18 of the Act requiring the Special Land Acquisition Officer to refer the matters to the Court for determination of appropriate amount of compensation payable to them. Accordingly, references were made to the District Court, Ahmedabad (Rural) at Mirzapur, which were numbered as Land Acquisition Cases No.2272/96 to 2306/96. In the reference applications it was pleaded by the claimants that village Vahiya had got all facilities, such as, school, telephone, hospitals, co-operative societies and co.op.milk society and, therefore, in view of the development which had taken place in the village, they were entitled to compensation at the rate of Rs. 30/per sq.mt. According to the claimants, the lands acquired were highly fertile and as each claimant was earning Rs. 7000/- to Rs. 8000/- as net income per Bigha per year, the claim for enhanced compensation made in the reference applications should be accepted. The Special Land Acquisition Officer, Narmada Project, Unit-3, Ahmedabad contested the reference applications by filing written statement at Exh.10. In the reply, it was stated that compensation payable to the claimants was determined after taking into consideration the relevant factors, such as, location, yield etc. and, therefore, the reference applications should be dismissed. The Executive Engineer, Sardar Sarovar Narmada Nigam, Limbdi contested the reference applications by filing written statement at Exh.13 contending, inter-alia, that having regard to the prevailing market rates of the lands as on the relevant date as well as location of each piece of land acquired, the claimants were not entitled to enhanced compensation and, therefore, the reference applications should not be accepted. The learned counsel for the claimants had submitted purshis at Exh.14 requesting the reference court to consolidate all the reference cases with Land Acquisition Case No.2295/96. That purshis was not opposed by the learned counsel for the present appellants and, therefore, reference court by

passing an order below Exh.14 had consolidated all the reference cases with Land Acquisition Case No.2295/96, which was treated as main case and in which parties had led common evidence.

3. Upon rival assertions of the parties, necessary issues for determination were raised by the reference court at Exh.11. On behalf of the claimants, one of the claimants i.e. Chamanji Kuvarjibhai Patel was examined at Exh.49. The witness deposed before the court that the lands acquired were irrigated lands and all the claimants were taking crops of wheat, cotton, cumin seeds, millet, juvar etc. in one year. The witness stated about the rate of different agricultural products prevailing at the relevant date and claimed that each claimant was earning Rs. 7000/- to Rs. 8000/- as net agricultural income per Bigha per year. The witness further claimed that the lands acquired were situated on the western block of Dhandhuka Taluka and all the lands situated on western block were similar and of equal fertility as well as productivity. According to this witness, western block of Dhandhuka Taluka is adjoining to the limits of Bhavnagar, Botad, Vadhvan, Sarangpur, Ranpur, Dharpipla, Kinara etc. The witness mentioned in his deposition that national highway of Ahmedabad - Dhandhuka - Vallbhipur Bhavnagar was passing through their area and the village is connected with two railway lines. The witness specifically mentioned in his evidence that the lands of villages Ranpur, Dharpipla, Kinara, Sarangpur, Godhavata were similar and equal in fertility to the lands acquired in the present case. In his cross-examination, the witness admitted that he had no documentary evidence to establish that each claimant was getting Rs. 7000/- to Rs. 8000/- as net agricultural income per Bigha per year. The witness denied the suggestion made on behalf of the present appellants that no cogent evidence was produced before the Land Acquisition Officer for claiming higher compensation. The witness further stated in his cross-examination that some of the acquired lands were not even, but that had not affected intensive cultivation of the lands.

On behalf of the claimants, another witness i.e. Savjibhai Laljibhai Patel was examined at Exh.50. He was a member of Dhandhuka Taluka Panchayat for 5 years. This witness stated in his evidence that some of villages Sarangpur, Khambhada, Kundal, Vahiya, Ranpur, Godhavata, Rojid, Vejalka, Chandarwa, Sundariyana, Kinara etc. are adjoining each other and at a distance of 5 KMs. from each other. The witness informed the Court that on the lands of all these villages, crops of cotton, wheat, tel,

cumin seeds etc. were being raised by the farmers. In his cross-examination, the witness stated that the Land Acquisition Officer had never called upon the claimants to produce sale instances to substantiate their claim for compensation at the rate of Rs. 30/- per sq.mt.

4. It may be stated that the claimants had produced Extracts of Village Form 7/12 relating to acquired lands at Exhs.17 to 48 to substantiate their claim that the lands acquired were irrigated lands and that three crops in a year were being raised by each claimant. The claimants had submitted a list of documents at Exh.53 and sought to produce previous awards of the reference court. The previous award of the reference court dated February 7, 1995 rendered in Land Acquisition Cases No.1135/87 to 1142/87 with respect to agricultural lands of village Ranpur was produced at Exh.54; whereas previous award of the reference court rendered on January 6, 1997 in Land Acquisition Cases No.334/88 to 345/88 relating to agricultural lands of village Khus was produced at Exh.55. Judgment of Division Bench of the High Court rendered in First Appeals No.3712/97 to 3723/97 on February 26, 1998 confirming the award Exh.55 was produced at Exh.56; whereas previous award of reference court rendered on January 27, 1997 in Land Acquisition Cases No. 72/89 to 101/89 with respect to agricultural lands of village Dharpippla was produced at Exh.57. Moreover, previous award of reference court dated September 10, 1995 rendered in Land Acquisition Cases No.601/89 to 642/89 and 203/90 relating to agricultural lands of village Sarangpur was produced at Exh.58 and judgment rendered by the Division Bench of High Court in First Appeal No.4288/96 decided on December 26, 1996 by which award Exh.58 was confirmed, was produced at Exh.59. Previous award of the reference court dated January 10, 1995 rendered in Land Acquisition Case No.726/91 relating to agricultural land of village Barvala was produced at Exh.60; whereas previous judgment of the reference court dated January 10, 1995, rendered in Land Acquisition Case No.748/91 in relation to agricultural land of village Kinara was produced at Exh.61. Further previous award of reference court dated January 10, 1995 rendered in Land Acquisition Case No.749/91 in relation to agricultural land of village Patna was produced at Exh.62.

5. On behalf of the present appellants, witness Karansinh Mathurbhai was examined at Exh.62. This witness stated before the Court that village Vahiya is at a distance of 32 Kms. away from taluka place and 132 Kms. away from district place. According to the witness, there was no big industry or G.I.D.C. estate

and development of the village was negligible. The witness informed the court that the lands acquired were irrigated as well as non-irrigated lands and main crops which were being raised on the lands acquired were cotton, tel, cumin seeds, millet, juvar etc. In his cross-examination, the witness admitted that he had no personal knowledge about local of the lands acquired nor information about agricultural produces being raised thereon or their rates at the relevant time. On behalf of the appellants, another witness i.e. Pallaviben Ghanshyambhai, who was discharging duties as Land Acquisition Officer, Narmada Project, Unit No.3, Ahmedabad, was also examined at Exh.71. She narrated the procedure which was followed before acquiring the lands in question and stated that before determining the compensation payable to the claimants, she had taken into consideration the Engineer's report, copies of sale instances for last 5 years etc. In her cross-examination, the witness denied the suggestion that at the time of determining the market value of the lands acquired, she had not taken into consideration the evidence produced by the claimants.

6. The reference court, on appreciation of evidence led by the parties, held that the previous awards of reference court relating to agricultural lands of villages Ranpur, Dharpippla, Barvala, Kinara and Patna were comparable as well as relevant for the purpose of determining market value of the lands acquired in the present case. After placing reliance on those previous awards, the reference court by the impugned judgment has held that the claimants in these cases are entitled to compensation at the rate of Rs. 28/- per sq.mt., which has given rise to the present appeals.

7. Ms. Nandini Joshi, learned A.G.P. submitted that in view of the distance between different villages, previous awards of villages Ranpur, Dharpippla, Barvala, Kinara and Patna should not have been relied on while determining market value of the agricultural lands which were acquired from village Vahiya. According to the learned counsel for the appellants, the previous awards did not afford any guide for determining compensation payable to the claimants in this case and, therefore, those previous awards should not have been relied on by the reference court. What was maintained was that no cogent and reliable evidence was led by the claimants to substantiate their claim for higher compensation and, therefore, the appeals should be allowed.

8. Mr. Nitin M.Amin, learned counsel for the

claimants submitted that the evidence adduced on behalf of the claimants establishes that the agricultural lands of village Ranpur, Dharpipla, Barvala, Kinara and Patna were similar in all respects including fertility and productivity and, therefore, no error was committed by the reference court in placing reliance on the previous awards relating to agricultural lands of those villages while determining the amount of compensation payable to the claimants in the present cases. According to the learned counsel for the claimants, on the basis of previous awards the reference court ought to have awarded Rs. 30/- per sq.mt. to the claimants as claimed in the reference applications, but as the claimants have not filed any appeal for enhancement of compensation, the claimants may not be entitled to compensation at the rate of Rs. 30/- per sq.mt., but no case having been made out for reduction of compensation payable to the claimants, the appeals should be dismissed.

9. We have heard the learned counsel for the parties and taken into consideration the paper book supplied by the learned counsel for the claimants which includes oral as well as documentary evidence adduced by the parties before the reference court. Exhs.17 to 48 which are Extracts of Village Form No.7/12, would indicate that the lands acquired were irrigated lands and each claimant was raising three crops in a year. Thus, there is no manner of doubt that intensive cultivation was undertaken by the claimants. In these cases, the claimants have not relied upon the sale instances or yield method for substantiating their claim for higher compensation and have relied upon previous awards of reference courts, some of which are confirmed in appeals by the High Court. It is well settled that the award rendered by the reference court in respect of similar land and which has become final can be taken into consideration for the purpose of determining market value of the lands acquired subsequently from the same village or adjacent village. In the category of sales fall the awards by Courts in previous case of land acquisition. They are judgments in personam based on the balance of evidence in the case adduced by the parties. Price of land in vicinity in previous land acquisition proceedings can be treated as affording a guide for determination of compensation to be awarded for lands acquired subsequently. In assessing the market value of a piece of land, the price paid in other transactions relating to land in the neighbourhood must be of some value. What its value should be has to be determined by the Court after considering all the evidence on which the previous award is founded. The awards given by the reference court are atleast relevant

materials and may be in the nature of admission with regard to value of the lands on behalf of the State and if the lands involved in the awards are comparable lands and in reasonable proximity of the subsequently acquired lands, rates found in the said previous awards can be treated as reliable material to afford a basis to work upon for determination of the compensation on a later date. Having regard to these principles, we now proceed to consider the question whether the previous awards produced by the claimants are relevant and comparable. Exh.54, which is previous award of reference court in Land Acquisition Cases No.1135/87 to 1142/87 indicates that agricultural lands of village Ranpur were acquired for the public purpose of construction of Limbdi-Ranpur-Botad Road pursuant to publication of notification under section 4(1) of the Act in the Official Gazette on March 4, 1982. The Land Acquisition Officer by his award dated March 31, 1987 had offered compensation to the claimants at the rate of Rs. 0.50 ps per sq.mt. Feeling aggrieved by the offer of compensation made by the Land Acquisition Officer, the claimants had sought references and the reference court by judgment dated February 7, 1995 had held that the claimants were entitled to compensation at the rate of Rs. 13/- per sq.mt. Exh.55, which is previous award of the reference court in Land Acquisition Cases No.334/88 to 345/88 indicates that agricultural lands of village Khus were acquired for the public purpose of construction of Limbadi-Ranpur-Botad Road pursuant to publication of notification under section 4(1) of the Act in the official gazette on March 14, 1984. Therein, Special Land Acquisition Officer by his award dated November 30, 1987 had offered compensation to the claimants at the rate of Rs. 00.50 ps. per sq.mt. In these cases also, references were sought and the reference court by judgment dated January 6, 1997 had held that the claimants were entitled to compensation at the rate of Rs.13/- per sq.mt. Exh.56, which is judgment delivered by the Division Bench of the High Court in First Appeals No.3712/97 to 3723/97 on February 26, 1998 shows that Exh.55 was confirmed by the High Court. Exh.57 is the judgment of the reference court rendered in Land Acquisition Cases No.72/89 to 101/89, which indicates that the agricultural lands of village Dharpipla were acquired for the public purpose of Sukhbhadar Canal Yojana pursuant to publication of notification under section 4(1) of the Act in the official gazette on July 23, 1984. Therein, the Land Acquisition Officer by his award dated July 16, 1986 had offered compensation to the claimants at the rate of Rs.00.50 ps. per sq.mt. for irrigated and Rs.00.30 ps. per sq.mt. for non-irrigated



lands. Thereupon the claimants had sought reference and the reference court by judgment dated January 27, 1997 had held that the claimants were entitled to compensation at the rate of Rs.13/- per sq.mt. Exh.58, which is judgment of the reference court in Land Acquisition Cases No. 601/89 to 642/89 and 203/90 shows that agricultural lands of village Sarangpur were acquired for the public purpose of Khambhada-Sarangpur Irrigation Scheme pursuant to publication of notification under section 4(1) of the Act in the official gazette on November 20, 1986. The Land Acquisition Officer had offered compensation to the claimants at the rate of Rs. 2/- per sq.mt. by his award dated March 9, 1989 and the reference court had held by judgment dated September 10, 1995 that the claimants were entitled to compensation at the rate of Rs. 15/- per sq.mt. That award of the reference court was challenged by the State Government in First Appeal No.4288/96 and Exh.59 indicates that the award of the reference court produced at Exh.58 was confirmed. Again, Exh.60, which is the previous award of the reference court in Land Acquisition Case No.726/91, shows that survey no.581/1 of village Barvala was acquired for the public purpose of 132 K.V.Electric Sub-Station pursuant to publication of notification under section 4(1) of the Act in the official gazette on December 22, 1988. Therein, the Land Acquisition Officer had awarded compensation to the claimants at the rate of Rs.3/- per sq.mt., but in the reference, the reference court had awarded compensation to the claimants at the rate of RS. 20/- per sq.mt. by judgment dated January 10, 1995. Exh.61, which is previous award of the reference court in Land Acquisition Case No.748/91, shows that survey no.94 of village Kinara was acquired for the public purpose of 66 K.V. Electric Sub-Station pursuant to publication of notification under section 4(1) of the Act in the official gazette on September 21, 1989 and the Land Acquisition Officer by his award dated April 4, 1991 offered compensation to the claimants at the rate of Rs.00.75 ps. per sq.mt. Thereupon the claimant had sought reference and the reference court by judgment dated January 10,1995 has held that the claimant was entitled to compensation at the rate of Rs. 22.50 ps. per sq.mt. Exh.62, which is previous award of the reference court in Land Acquisition Case No. 749/91, shows that survey no.32 of village Patna was acquired for the public purpose of Bhadar Group Water Supply Scheme pursuant to publication of notification under section 4(1) of the Act in the official gazette on December 10, 1987 and the Land Acquisition Officer by his award dated October 3, 1989 offered compensation to the claimants at the rate of Rs. 00.50 ps. per sq.mt. Feeling aggrieved

by the said offer, the claimant had sought reference and the reference court by judgment dated January 10, 1995 had held that the claimant was entitled to compensation at the rate of Rs.21/- per sq.mt. The evidence of witnesses Chamanbhai Kuvarjibhai Patel and Savjibhai Laljibhai Patel led on behalf of the claimants indicates that all the villages i.e. Sarangpur, Ranpur, Khus, Dharpipla, Barvala, Kinara, Patana, Vahiya etc. are situated adjoining each other and fertility as well as productivity of the lands of all these villages are similar. The previous awards relating to agricultural lands of village Ranpur, Khus, Dharpipla, Barvala, Kinara, Patana etc. would indicate that therein also the claimants were raising same crops as were being raised by the claimants in the present cases. Though two witnesses were examined on behalf of the present appellants, it could not be established that the agricultural lands of villages Ranpur, Khus, Dharpipla, Kinara, Sarangpur etc. were situated at a great distance or that fertility and productivity of the lands of those villages were different from the lands which were acquired in the present cases from village Vahiya. From the documentary evidence produced on the record of the case as well as oral evidence adduced by the claimants, it is clear that the lands acquired in the present cases were situated in the area of Nalkantha and Bhalpradesh and villages Ranpur, Khus, Dharpipla, Kinara, Sarangpur, Barvala etc. fall in the strip of Bhalpradesh. Under the circumstances, we are of the opinion that no error was committed by the reference court in placing reliance on those previous awards while determining market value of the lands acquired in the instant cases. Though the reference court has recorded a finding that all these villages were adjoining each other and the claimants should be entitled to compensation at the rate of Rs.29/per sq.mt. on the basis of average indicated in those previous awards, the reference court in the ultimate decision has awarded additional amount of compensation at the rate of Rs.28/- per sq.mt. which cannot be considered to be excessive at all. The learned counsel for the appellants has failed to dislodge the finding recorded by the reference court that the lands of all the villages are situated in the western area of Dhandhuka taluka and the lands are similar as well as equal in fertility, potentiality and productivity. Considering all the aspects of the case as well as relevant factors, which must be borne in mind by the court before determining the amount of compensation payable to the claimants, we are of the opinion that no ground is made out by the appellants to interfere with the impugned common judgment and award. The reference

court has taken into consideration not only reliable evidence led by the claimants for substantiating their claim for enhanced compensation, but has also noticed the correct principles governing determination of compensation as laid down by the Supreme Court as well as High Courts, before determining just compensation payable to the claimants. Therefore, the appeals cannot be accepted and are liable to be dismissed.

For the foregoing reasons, all the appeals fail and are dismissed, with no order as to costs.

(J.M.Panchal,J.)

(M.C.Patel, J.)

(patel)